

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MR. LOYD P. WHITE
CHESTER DEVELOPMENT ASSOCIATES, L.L.C.
VWP PERMIT NO. 97-0597**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Chester Development Associates, L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. “Chester Development Assoc.” or the “permittee” means Chester Development Associates, L.L.C. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Project” means the construction of an 82 acre commercial/residential development called Chester Village Green located along State Route 10 in the Town of Chester in Chesterfield County, Virginia
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 97-0597.

SECTION C: Findings of Fact and Conclusions of Law

1. The Chester Development Assoc. proposed to construct an 82-acre commercial/residential development known as Chester Village Green in the Town of Chester. To address mitigation for the permanent impacts to wetlands and waters of the State that would result from the construction of road crossings, buildings, parking spaces, and residential lots, a Permit was issued to Chester Development Associates on June 2, 1998, and will expire on June 2, 2003.
2. The Permit allows impacts to 2.96 acres of headwater forested wetlands and waters of the State. In order to compensate for wetland impacts, the Permit requires compensatory mitigation by the on-site construction and preservation of 5.96 acres of forested wetlands and the on-site preservation of all undisturbed State waters (including wetlands).
3. The permittee began construction activities in 1998 and, to date, 2.56 acres of wetlands have been impacted by construction activities. A DEQ file review on October 15, 2002, revealed non-compliance with the Permit by the current permittee.
4. According to DEQ records, the permittee has failed to conduct any wetland creation activities and has failed to provide any preservation of all undisturbed State waters and wetlands on-site. The Permit, Part I.C.1.a, requires that the permittee mitigate the cumulative loss of 2.96 acres of State waters by successfully creating and preserving in perpetuity an equivalent of 5.96 acres of forested wetlands on-site, and preserving all undisturbed State waters (including wetlands) on-site.
5. According to DEQ records, the permittee initiated construction activities in 1998, has impacted 2.56 acres of wetlands, but has failed to submit the protective instrument preserving the undisturbed State waters (including wetlands) on-site as required by the Permit. Part I.C.2 of the Permit requires that a final copy of the

protective instrument be forwarded to DEQ within 120 days of the initiation of construction activities within State waters.

6. No photographs prior to and during construction activities have been submitted to DEQ as required by the Permit. Part I.D.1 of the Permit requires that dated photographs be taken prior to and at least twice during construction activities. The photographs are to clearly depict the wetland flagging as required by Part I.B.11 and erosion and sedimentation control measures as required by Part I.B.10 of the Permit.
7. The permittee failed to submit monitoring reports for construction activities and wetland mitigation activities as required by the Permit. Part I.F.1 of the Permit, requires the submittal of the photographic reports within 30 days from the date the pictures are taken; and requires the submittal of the wetland mitigation and construction activities reports by September 30th of years one and three, and post construction or 180 days prior to permit expiration, whichever comes first.
8. The permittee failed to notify DEQ ten (10) days prior to the start of the authorized activities as required by the Permit. Part I.G of the Permit requires the permittee notify DEQ ten days prior to the start of the authorized activities, so that inspections of the project may be made.
9. DEQ issued a Notice of Violation (NOV) to the Chester Development Associates, L.L.C. on November 20, 2002, citing the Permit violations, as listed above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Chester Development Assoc., and Chester Development Assoc. voluntarily agrees, to pay a civil charge of **\$6,800.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note the Federal Identification Number for Chester Development Assoc.. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Chester Development Assoc., for good cause shown by Chester Development Assoc., or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Chester Development Assoc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Chester Development Assoc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chester Development Assoc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Chester Development Assoc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chester Development Assoc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Chester Development Assoc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chester Development Assoc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Chester Development Assoc.. Notwithstanding the foregoing, Chester Development Assoc. agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Chester Development Assoc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chester Development Assoc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Chester Development Assoc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Chester Development Assoc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of
_____, 2003, by _____, who is
(name)
_____ of Chester Development Assoc., on behalf of Chester Development
Assoc..
(title)

Notary Public

My commission expires: _____.